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SENSITIVE*

Commission reply to the European Ombudsman

Complaint ref. 833/2019

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Opinion of the European Commission on a proposal for a solution from the European Ombudsman

- Complaint by Mr David CRONIN, ref. 833/2019/FP

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

On 30 November 2018, the complainant submitted, under Regulation (EC) No 1049/2001, the application for access to the document containing the job description of the coordinator for combating anti-Semitism of the European Commission (hereafter: ‘the Coordinator’). The application was the follow-up to complainant’s previous application Gestdem 2018/3412¹, in which he requested access to the same document.

The application was dealt with by the Directorate-General for Human Resources and Security, which identified one document as falling under its scope:

- Extract from internal Commission application SYSPER² containing the job description of the staff member in question.

In its initial reply dated 23 January 2019, the Directorate-General for Human Resources and Security referred to the decision C(2018)6537, closing case Gestdem 2018/3412 and confirming the refusal of access to the document concerned, based on the exception in Article 4(1)(b) of Regulation (EC) No 1049/2001, protecting privacy and the integrity of the individual. The Directorate-General for Human Resources and Security stated in its reply that the underlying reasons provided for in that decision remain valid also as regards the complainant’s new application, as it relates to the same document.

In the confirmatory decision C(2019)1456 of 15 February 2019, the European Commission confirmed the position of the Directorate-General for Human Resources and Security to refuse access to the document concerned, based on the same exception.

II. THE COMPLAINT TO THE EUROPEAN OMBUDSMAN

The complainant turned to the European Ombudsman on 10 May 2019. He argued that the public had an interest in knowing the Coordinator’s job description since, in the complainant’s view, she allegedly acted in a political and controversial manner. The complainant also argued that access to the document in question is necessary to ascertain if the European Commission instructed her to act in this way.

III. THE EUROPEAN OMBUDSMAN’S INQUIRY AND THE PROPOSAL FOR THE SOLUTION

In the course of the inquiry on the request for access to documents registered under Gestdem 2018/3412, the European Ombudsman reviewed the document concerned and issued the present proposal.

The European Ombudsman explicitly acknowledged that the document requested

¹ Application of 21 June 2018, initial reply of 11 July 2018 and the confirmatory decision C(2018)6537 of 2 October 2018.

² Informatics tool used by the European Commission to store and manage the information concerning staff members.

contained the personal data of the Coordinator and therefore, the European Commission had to take into account the provisions of Regulation (EC) No 45/2001³ before taking the decision to grant or refuse access thereto. This includes the assessment under Article 8(b) of the said regulation, applicable to the transfer of the personal data. Under the provisions of the above-mentioned article, such transfer can take place only if the recipient (of the personal data⁴) establishes the necessity of having the data transferred and if there is no reason to assume that the data subject's legitimate interests might be prejudiced.

The European Ombudsman does not share the position of the European Commission that the complainant failed to show a necessity for disclosing the personal data in question, thus not fulfilling the requirement of Article 8(b) of Regulation (EC) No 45/2001, referred to above. Indeed, according to the European Ombudsman, the complainant specified the reasons why he is interested in the information included in the document concerned, which are to evaluate the compatibility of the Coordinator's public statements with the job description. This, in the view of the European Ombudsman, is not possible on the basis of the information available in the press releases and other public statements relating to the Coordinator's activities.

The European Ombudsman also took the view that the European Commission did not specify how disclosure of the document in question could affect the Coordinator's interests.

Consequently, the European Ombudsman proposes that '[t]he European Commission should reconsider its refusal to grant public access to the job description of its Coordinator on Combating Anti-Semitism and consider granting public access to it'.

III. THE OPINION OF THE EUROPEAN COMMISSION ON THE PROPOSAL OF THE EUROPEAN OMBUDSMAN

The European Commission is of the view that the confirmatory decision was legally and factually correct at the point in time when it was taken.

With regard to the conclusions of the assessment carried out under Article 8(b) of Regulation (EC) No 45/2001, the European Commission acknowledges that the complainant provided in his initial and confirmatory applications the argumentation, which in his view, warrants the disclosure of the document requested. Nonetheless, from the way it was phrased, the European Commission considered that the complainant refers to the overriding public interest that outweighs, in his view, the need to protect the contents of the document. Indeed, in case Gestdem 2018/6361, the complainant justifies the need to disclose the document in question with the argumentation linked to the 'right to know' of the public, especially in the context of the various statements made by the Coordinator, which allegedly conflict with the role the European Commission entrusted her. In this context he argues that, emphasis added, '[i]t is **reasonable for the public** to ask if [X] has been tasked by the European Commission with pursuing an agenda that will benefit a foreign state, namely Israel'.

³ Regulation (EC) No 45/2001 was still in force when handling the complainant application Gestdem 2018/6361.

⁴ In the case at hand, the complainant is (would be) the recipient, as the document in question would be disclosed to him.

The European Commission would like to underline that access to the document requested was refused, based on the exception in Article 4(1)(b) of Regulation (EC) No 1049/2001. This exception protects privacy and the integrity of the individual and does not envisage the balancing test against the overriding public interest.

According to the European Ombudsman, however, the argumentation provided by the complainant should have been considered by the European Commission as justification for the transfer of personal data under Article 8(b) of Regulation (EC) No 45/2001. Indeed, through the public disclosure of the document concerned, the complainant would like to allow the public at large to scrutinise the compliance of the Coordinator's activities with the instructions given to her.

According to the case law of the EU Court, if the condition of necessity laid down by Article 8(b) of Regulation (EC) No 45/2001, which is to be interpreted strictly, is to be fulfilled, it must be established that the transfer of personal data is the most appropriate means for attaining the applicant's objective, and that it is proportionate to that objective⁵. The same case law also confirms that the justification may not be based on the 'general considerations'⁶.

In the view of the European Commission, the complainant actually based his justification on such 'general considerations' ('public right to know'). As a preliminary point, it is the task of the hierarchy within the European Commission to scrutinize the work of the Coordinator, including from the point of view of compliance of her statements with the Coordinator's mandate. In any case, it is the view of the European Commission that public disclosure of the document concerned is not the most appropriate and proportionate means of allowing the public to scrutinize the work of the Coordinator. Firstly, the European Commission regularly publishes information on its policy regarding the fight against anti-Semitism, which makes it already possible to compare the statements made by the Coordinator with the objectives pursued by the institution in that area. Secondly, the applicant, who got access to the description of the Coordinator's tasks (although in a more succinct form), has not given any concrete argument to explain why further information was proportionate to satisfy the general "right to know" invoked in his application.⁷

The European Ombudsman also considers that the European Commission did not specify how disclosure of the document in question could affect the Coordinator's interests. In this context, it needs to be emphasised that only once the criterion of necessity has been fulfilled by the complaint, the European Commission is required to proceed to the second step of the assessment under Article 8(b) of Regulation (EC) No 45/2001. As explained above, in the case at hand, the complainant, in the view of the European Commission, did not provide the argumentation allowing for considering this criterion as fulfilled.

Nonetheless, the European Commission would like to underline that while public scrutiny legitimately applies to the statements made by any official on behalf of the European Commission, the fact remains that any data subject, who does not hold a

⁵ Judgement of the General Court of 15 July 2015, *Dennekamp v European Parliament*, T-115/13, EU:T:2015:497, paragraph 77 (hereafter referred to as *Dennekamp v European Parliament* judgement).

⁶ *Dennekamp v European Parliament* judgement cited above, paragraph 34.

⁷ As explained in the reply of the Directorate-General for Human Resources and Security provided on 11 July 2018 to the initial application Gestdem 2019/3412.

political office, has a legitimate interest that the question of the compliance of their acts with the instructions given by their hierarchy is a matter that comes within the authority of their hierarchy, in the light of all the relevant circumstances and in accordance with the Staff Regulations.

It needs to be also reminded in this context that according to the case law of the European Court of Human Rights the notion of ‘private life’ cannot be taken to mean that the professional activities of either natural or legal persons are excluded⁸.

In the light of the above, the European Commission considers that the transfer of personal data included in the document requested (through its public disclosure) could not have been considered as fulfilling the requirements of Regulation (EC) No 45/2001. In consequence, the use of the exception under Article 4(1)(b) of Regulation (EC) No 1049/2001 was justified.

IV. CONCLUSION

The European Commission is of the view that the confirmatory decision C(2019)1456 of 15 February 2019 was legally and factually correct at the point in time when it was taken.

The Commission would also like to recall that at the time of appointing the coordinators on combating antisemitism and on combating anti-Muslim hatred, it had already published information on their future tasks, namely that they would bring the concerns of the respective communities to the attention of the political level of the Commission and help to coordinate efforts across services in the context of the Commission's overarching policy on racism, xenophobia and other forms of intolerance.⁹ This involves liaising with the Member States, the European Parliament, other institutions, relevant civil society organisations and academia; relations with the media; contributing to actions in the field of fundamental rights and other policy areas, or general external communication and outreach tasks, as well as liaising with the respective communities.

However, given the special circumstances of this case and the consent of the job holder and data subject herself, the European Commission has concluded that access may exceptionally be granted to the requested document (‘Job description’). Therefore, please find attached the latter annexed to this reply. This is without prejudice to the Commission’s general policy on these matters and does not create a precedent for future cases.

The European Commission understands that the European Ombudsman will communicate the present reply to the complainant and hereby agrees with the transmission to the applicant of the document.

For the Commission

*Ursula VON DER LEYEN
The President*

⁸ For instance: judgment of 28 January 2003, *Peck v The United Kingdom*, no 44647/98, §57, ECHR 2003-I.

⁹ https://ec.europa.eu/home-affairs/what-is-new/news/news/2015/20151201_2_en



EUROPEAN COMMISSION

Job Description Form

Job description version3 (*Active*)
Job description version223692 in *JUST.C.2*
Valid from08/10/2019until

Job Holder

Name

Marie Katharina VON SCHNURBEIN

Job Profile

Position

ADMINISTRATOR - TEAM LEADER

Job title

Team Leader - Coordinator on combatting Antisemitism

Domains**Generic domain**

JUSTICE and HUMAN/CIVIL RIGHTS

Intermediate domain**Specific domain****Sensitive job**

No

Overall purpose

As coordinator on combatting Antisemitism, to liaise closely with the Jewish community and to bring their concerns to the attention of the political level of the Commission, coordinate efforts across services in the context of the Commission's overarching policy on racism, xenophobia and other forms of intolerance.

Legal disclaimer

[Users are advised to check the available list of Legal Disclaimers related to their contract type.](#)

Functions and duties

+ POLICY COORDINATION - Co-ordination of policy activities

- *Propose specific aspects of the prevention and fight against Antisemitism to the development of the Commission's overarching strategy to combat hate crime, hate speech, intolerance and discrimination*
- *Follow up, monitor and mainstream policy activities within the Commission in the area of fundamental rights, including freedom of thought, conscience and religion*
- *Contribute to the coherence of new policy development activities and their implementation with the political objectives and priorities of the Commission.*

+ POLICY COORDINATION - Co-ordination of policy activities with other Directorates General

- *Follow up, analyse and assess the positions of other Directorates General and external stakeholders*
- *Ensure that DG JUSTICE's priorities concerning fundamental rights and in particular the Antisemitism, racism and xenophobia policy are taken into account by policy proposals presented by other Directorates General.*
- *Contribute to other relevant policy areas such as education, integration, security as well as those geared at combating radicalization, violent extremism and terrorism.*

+ (BUSINESS) MANAGEMENT and PLANNING - Team leader for the team working on antisemitism

- *Lead the team of colleagues working on antisemitism*

+ EXTERNAL COMMUNICATION (general) - Public speaking

- *Act as dedicated contact points for the Jewish communities*
- *Liaise with the Member States, the European Parliament, other institutions, relevant civil society organisations and academia with a view to strengthening policy responses designed to address Antisemitism and more generally racism, xenophobia and other forms of intolerance*

+ EXTERNAL COMMUNICATION (general) - Relations with the political circle and relations with the media

- *Assist in the preparation of files on the EU policies or on the political situation in the Member State*
- *Participate in drafting briefings and speeches*
- *Organise events addressed to the civil society and relevant stakeholders*
- *Suggest targeted media opportunities for FVP and the Commissioner via the Cabinet*
- *Give media interviews after prior consultation with the Cabinet and the Spokespersons' Service*
- *Assist the processing of oral and written requests of the journalists (request on documentation and information to various institutions and DGs of the Commission)*

+ CONFERENCES and EVENTS - Conference administration and logistics

- *Organise and develop trainings*
- *Manage projects relating to the organisation of congresses, conferences and seminars on behalf of the Commission.*

+ MISSIONS, MEETINGS and VISITS (incl Protocol Service) - Welcoming visitors

- *Welcome, direct and inform visitors from outside the Commission.*

Job requirements

Experience"

+ RELATIONS with MEMBER STATES and CIVIL SOCIETY

Job-Related experience:at least 3 years
Qualifier:essential
Ability to work with external stakeholders

+ POLICY

Job-Related experience:at least 5 years
Qualifier:desirable
Broad general knowledge of Commission policies

+ POLICY, EU and POLITICS (general)

Job-Related experience:at least 5 years
Qualifier:essential
Political sensitivity

Languages

	Listening	Reading	Spoken interaction	Spoken production	Writing
English	C2	C2	C2	C2	C2
French	C1	C1	C1	C1	C1

Knowledge

- *LAW*
LAW – SPECIAL APPLICATION AREAS
Human rights
- *JUSTICE and HUMAN/CIVIL RIGHTS*
JUSTICE, FREEDOM and SECURITY
Fundamental rights

Competences

- *Communicating*
Ability to understand and be understood
Capacity to communicate technical or specialised information
Capacity to present issues to an audience
Feel at ease in public
Negotiation skills
- *Working with Others*
Confidentiality
Empathy
- *Leadership*
Ability to lead a team
An awareness of and attentiveness to individual differences

Job Environment

Organisational entity

Type: Unit
Size: 16 to 25 people
predominance of women

Gender balance (within the entity):

Comments:

Presentation of the entity:

The mission of this unit is to ensure the effective implementation of the EU Charter of Fundamental Rights, including the promotion of the rights of the child.

The unit is responsible for:

- ensuring the mainstreaming of fundamental rights in all EU policies and for ensuring that the Charter is respected in Commission legislative proposals and by Member States when they implement Union law (strategy for the effective implementation of the Charter);
- promoting the fight against racism and xenophobia including Antisemitism and Anti Muslim hatred, implementing the framework decision against racism and xenophobia;
- implementing the EU agenda for the rights of the child, promoting the rights of the child and for ensuring that the best interests of children are taken into account in the development of all EU policies;
- The relationship with the European Union Agency for Fundamental Rights;
- The Dialogue under Article 17 TFEU with churches, religious associations and philosophical and non-confessional organisations.

Job related issues

Atypical working hours

Specialised Job

Missions

Frequent, i.e. 2 or more missions / month

Long duration, i.e. missions lasting more than a week

Comments:

Flexibility in working hours in pick moments (ex. organisation of main events) is important. Some missions are necessary.

Workplace, health & safety related issues

Noisy environment

Physical effort / materials handling

Work with chemicals / biological materials

Radioprotection area

Use of personal protective equipment

Other

Comments:

Other

Comments: